

**PATENT**  
**IBM Docket No. RSW9-2000-0024US1**

**Remarks**

This paper is responsive to an Office action mailed May 19, 2003. That action indicated that the drawings included with the original application were approved by the Office Draftsperson. No objections were made to the form or content of the specification.

Claims 5 and 10 were objected to as being multiple dependent claims which failed to refer to other claims in the alternative only. Claim 5 has been amended to conform to Office requirements. Claim 10 has been canceled.

Claim 1 was rejected under 35 USC 103(a) as being unpatentable over US patent 5,864,483 (Brichta) in view of US patent 6,272,110 (Tunicliffe). Claim 1 has been amended to incorporate the subject matter of previously dependent claims 2 and 3, both of which are now canceled. The following discussion, while referencing amended claim 1, will be of the rejection applied to original claim 3. That rejection, based on 35 USC 103(a), stated that the claim was considered unpatentable over Brichta in view of Tunicliffe in further view of US patent 5,884,175 (Aras).

Amended claim 1 is believed to define patentable subject matter over any possible combination of the teachings of Brichta, Tunicliffe and Aras because the primary reference (Brichta) fails to teach or suggest the invention defined in the claim and the secondary references (Tunicliffe and Aras) to nothing to overcome the deficiencies of the primary reference.

Amended claim 1 recites a method of monitoring network performance which includes a step of obtaining samples of a performance-defining metric. An entire set of samples is analyzed to determine whether the set satisfies predetermined criteria. The set of samples is used in determining a trend in service only if the set satisfies the predetermined criteria. If the set fails to meet the criteria, the entire set is discarded and no effort is made to determine a trend in service.

Brichta neither teaches nor suggests analyzing a set of samples to determine whether the entire set meets predetermined criteria. What Brichta teaches (at column 7, line 65 through column 8, line 12) is that "detailed services information 20 for occurrences not falling within the

Atty. Docket No. RSW920000024US1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Glenn Clement Aikens et al.  
Serial No.: 09/547,273  
Filed: April 11, 2000  
For: Method, System and Program Product for Managing Network Performance

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Phone: Fax No. 703-872-9306

**CERTIFICATION OF FACSIMILE TRANSMISSION**

I hereby certify that the following papers are being facsimile transmitted to the Patent and Trademark Office at (703) 872-9306 on the date shown below:

1. Response to Supplemental Notice of Non-Compliant Amendment mailed Sept. 10, 2004.

pages total 16 (including this cover sheet)

Date: Oct. 11, 2004

Linda Dupont

(Name of person signing certification)

  
(Signature)

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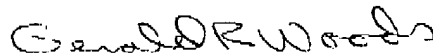
relationship between the standard deviation and the mean of the set of samples. Neither Brichta nor the secondary references teaches or suggests using the relationship defined in claim 11.

Claim 12 is written as a system claim but includes specific recitations of logic for determining the standard deviation and mean of each obtained set of samples, logic for determining the ratio of the standard deviation and mean of each obtained set of samples, and logic for terminating any prediction of a violation of network performance requirements where the obtained set has a ratio exceeding a predefined threshold. None of cited references discloses logic for performing the recited functions.

Claim 19 is basically a program product claim that specifically recites an operation of ignoring any set of samples which fail to meet predetermined criteria. None of the cited references teach or suggest ignoring an entire set of samples of the set fails to meet predefined criteria.

It is submitted that the claims remaining in the application define patentable subject matter over the art of record.

Respectfully Submitted,



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09/547,273 (RSW920000024US1)

- 10 -



## UNITED STATES PATENT &amp; TRADEMARK OFFICE

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Paper No.

## Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 07/13/04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, Jun. 30, 2003). In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

## THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_
- ☐ 3. Amendments to the drawings: \_\_\_\_\_
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: see attached

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/office11ver.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given ONE MONTH from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this ONE MONTH time limit is not extendable.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a TIME PERIOD of ONE MONTH from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

Legal Instruments Examiner (LIE)

Telephone No.

Rev. 10/03

Application/Control Number: 09/547,273  
Art Unit: 2142

Page 2

*Non-responsive Amendment  
Supplemental*

1. This communication is in response to amendment filed 07/13/04, claims 1, 4-7, 11-12, and 19 remain pending. Claims 1, 7, and 12 have been amended.

2. In accordance with MPEP §1.111 (Reply by applicant or patent owner to a non-final Office action). Amendment filed 07/13/04 does not include a reply, which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply *must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented (or amended) claims, patentable over any applied references*. In amending in reply to a rejection of claims in an application or patent under reexamination, the applicant or patent owner must clearly point out the patentable novelty, which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. The applicant or patent owner must also show how the amendments avoid such references or objections. [46 FR 29182, May 29, 1981; para. (b) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; paras. (a) and (c) revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; para. (a)(2) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003].

3. Applicant is reminded of 37 CFR 1.530 (e) Status of claims and support for claim changes. Whenever there is an amendment to the claims pursuant to paragraph (d) of this section, there **MUST** also be supplied, on pages separate from the pages containing the changes, the status (i.e., pending or canceled), as of the date of the amendment, of all patent claims and of all added claims, and an explanation of the support in the disclosure of the patent for the changes to the claims made by the amendment paper (see MPEP 2234). There is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed, *Wertheim*, 541 F.2d at 262, 191 USPQ at 96; however, with respect to newly added or amended claims, applicant should show support in the original disclosure for the new or amended claims. See MPEP § 714.02, and 2163.06. ("Applicant should specifically point out the support for any amendments made to the disclosure.") (see MPEP § 2163.04).

Application/Control Number: 09/547,273  
Art Unit: 2142

Page 3

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prieto, B. whose telephone number is (703) 305-0750. The Examiner can normally be reached on Monday-Friday from 6:00 to 3:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor, Jack B. Harvey can be reached on (703) 305-9705. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800/4700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system, status information for published application may be obtained from either Private or Public PAIR, for unpublished application Private PAIR only (see <http://pair-direct.uspto.gov> or the Electronic Business Center at 866-217-9197 (toll-free).

Any response to this action should be mailed to:  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

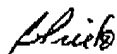
or faxed to the Central Fax Office:

(703) 872-9306, for Official communications and entry;

Or Telephone:

(703) 306-5631 for TC 2100 Customer Service Office.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington VA, Fourth Floor (Receptionist), further ensuring that a receipt is provided stamped "TC 2100".



B. Prieto  
TC 2100  
Patent Examiner  
September 7, 2004